

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAR 20 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of  
  
Improving Commission  
Processes

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PP Docket No. 96-17

To: The Commission

DOCKET FILE COPY ORIGINAL

MOTION FOR ACCEPTANCE OF LATE-FILED COMMENTS

The Industrial Telecommunications Association, Inc. ("ITA") attempted to deliver the original and nine copies of the enclosed set of Comments to the Commission's offices on Friday, March 15, 1996 for filing in the above-referenced proceeding. However, due to unexpected delays on the part of the courier service, the courier did not arrive at the Commission's offices until after the Commission's 5:30 p.m. closing time.

Accordingly, the courier returned to the FCC on Monday, March 18, and delivered the comments at that time. The comments were accepted at the Office of Secretary and stamped in with a filing date of March 18, 1996.

By this Motion, ITA respectfully requests that the Commission accept the comments for filing and given them full consideration during the course of this proceeding. The comments

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are directed at recommendations that may assist the Commission in its efforts to improve the efficiency of its processes. There will be no harm visited on other parties to this proceeding if the Commission accepts the comments. Rather, the comments should promote, in a non-adversarial manner, a more complete and thorough discussion on topics that are critical to the future functioning of the Commission.

Accordingly, ITA respectfully requests that the Commission accept the Comments as filed on March 18, 1996.

**INDUSTRIAL TELECOMMUNICATIONS  
ASSOCIATION, INC.**

By:

  
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Date: March 20, 1996

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To: The Commission

Comments of the  
Industrial Telecommunications Association, Inc.

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### Summary

In these comments designed to assist the Commission in its effort to improve its administrative and regulatory processes, the Industrial Telecommunications Association, Inc. offers the following observations and recommendations for the Commission's consideration:

- Though the Communications Act requires that the Commission retain responsibility for "granting" station licenses, the Act appears to be sufficiently flexible to permit the FCC to delegate certain non-discretionary licensing functions to private organizations, provided that the Commission exercises effective oversight.
- When delegating functions to frequency coordinators, the Commission should "push the envelope" and take full advantage of the flexibility in the Communications Act.
- The Commission should make appropriate changes to Parts 1, 90 and 101 of its rules to reflect the authority delegated.
- The Commission could use the 30-day reconsideration period provided in Section 1.108 of the rules as a safeguard mechanism for reviewing decisions reached on delegated authority.
- The Commission should delegate to qualified frequency coordinators the responsibility for non-discretionary actions relating to the following private land mobile licensing functions:
  - address changes
  - minor modifications to station licenses
  - station cancellations
  - license renewals
  - Special Temporary Authority
  - assignment of station licenses
  - applications for new stations to be operated on shared frequencies.

- The Commission should delegate to qualified private entities the responsibility for actions relating to the following private and common carrier microwave licensing functions:
  - address changes
  - minor modifications to station licenses
  - station cancellations
  - license renewals
  - Special Temporary Authority
- The Commission must adopt strict standards for identifying those organizations that are qualified to assume responsibility for licensing functions. It is imperative that any such organizations have a fully functioning capability for electronic exchange of data with the Commission.
- The Commission should compensate the designated frequency coordinators for the work performed by paying them a specified percentage of the application fees collected from the applications included in the delegation of authority.
- The Commission's Inspector General would have to implement an active auditing program to ensure that the selected frequency coordinators effectively perform the functions delegated to them.
- The Commission should also formally delegate responsibility for private land mobile enforcement matters to qualified frequency coordinators and should carefully define the scope of the authority being delegated.
- The Commission should institute a program for licensing persons in the private sector who are engaged in installing, servicing, or maintaining private land mobile radio equipment, as recommended in the Petition for Rule Making docketed under RM-8680.

In the Matter of )  
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Improving Commission ) PP Docket No. 96-17  
Processes )  
  
To: The Commission

The Industrial Telecommunications Association, Inc. ("ITA"), pursuant to the Federal Communications Commission's Notice of Inquiry in the above-referenced matter, hereby respectfully submits these Comments responsive to the Commission's request.<sup>1</sup>

1. ITA, formerly the Special Industrial Radio Service Association, Inc. (SIRSA), is an association organized under the laws of the District of Columbia. ITA is the Commission's certified frequency coordinator for the Special Industrial Radio Service and the Industrial/Land Transportation 421-430 MHz and 800/900 MHz frequency pools. ITA also coordinates channels from the 800 MHz General Category pool for those entities: (a)

<sup>1</sup> Notice of Inquiry (FCC 96-50), PP Docket No. 96-17, adopted February 8, 1996, released February 14, 1996, (hereinafter "Notice").

eligible to become Industrial/Land Transportation licensees; (b) wishing to expand trunked systems; or (c) consolidating conventional systems into a trunked system. ITA coordinates in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate radio stations on frequency assignments allocated to the Special Industrial Radio Service and the enumerated 800/900 MHz frequency pools.

2. ITA enjoys the support of a membership that includes more than 7,600 private land mobile radio communications licensees and the following trade associations:

- Alliance of Motion Picture and Television Producers
- American Mining Congress
- Associated Builders & Contractors, Inc.
- Florida Citrus Processors Association
- Florida Fruit & Vegetable Association
- National Aggregates Association
- National Food Processors Association
- National Propane Gas Association
- National Ready-Mixed Concrete Association
- National Utility Contractors Association
- New England Fuel Institute
- United States Telephone Association

## II. BACKGROUND

3. ITA appreciates the opportunity to provide comments on the critical issues raised in the Notice. During its history of more than 40 years, ITA has taken an active interest in identifying and helping to implement measures aimed at improving regulatory processes at the FCC. As a general matter, ITA is appreciative of the manner in which the Commission performs its work. For instance, ITA is pleased with the Commission's initiative in establishing the Wireless Telecommunications Bureau. ITA believes



this effort has helped to focus a higher level of attention on a particularly important facet of telecommunications that has sometimes been overlooked in the past.

4. ITA is quick to note, however, that the establishment of the Wireless Telecommunications Bureau would have been purely a cosmetic, and ultimately insignificant, change without a simultaneous commitment by personnel within the Bureau to improving the regulatory process. In fact, the staff of the Wireless Telecommunications Bureau has made a laudable effort to accomplish their work in an innovative and highly professional manner.

5. The private land mobile spectrum "refarming" proceeding, PR Docket No. 92-235, illustrates what ITA perceives to be a new approach in the way the FCC accomplishes its work. ITA applauds the Wireless Telecommunications Bureau for conducting the deliberations in the refarming proceeding in a way that stimulated active participation by user associations and other segments of the industry. Through a series of briefings and consultations with a wide range of industry participants, the Wireless Telecommunications Bureau was able to stimulate discussion on important issues such as the appropriate mechanism and timeframe for the introduction of narrower channelization. ITA believes the Commission was especially successful, in this proceeding, in fostering an environment that was receptive to new ideas and respectful of the opinions expressed by participants in the

proceeding.

6. Similarly, the FCC has found the staff of the Wireless Telecommunications Bureau's Licensing Division to be both helpful and fully committed to accomplishing their assigned tasks in a constructive and cooperative manner. ITA believes the FCC's decision to accept assistance from the Industry Coalition in the processing of the backlog of 800 MHz SMR applications is indicative of the Commission's intent and interest in forging, to the extent possible, a meaningful alliance between government and industry. The cooperation and assistance of the Licensing Division staff was instrumental in ensuring the success of this unique backlog reduction project.

### III. COMMENTS

7. In responding to the instant request for comments on improving the FCC's processes, the Industrial Telecommunications Association is mindful of the prior instances of successful cooperation between the FCC staff and the industry. Further, ITA remains convinced that the regulatory process works best when both the Commission and the industry engage in a cooperative effort to anticipate and resolve difficulties. ITA submits these comments with that thought foremost in mind. And, as a necessary corollary, ITA reiterates that the staff of the FCC, in Gettysburg as well as in Washington, is as dedicated and resourceful as at any time in

the Commission's history.

8. For reasons that are primarily budgetary in nature, the FCC is entering an era unlike any previous period in its history. Clearly, the FCC will have to find ways to conduct its business with fewer staff resources and less expansive budgets. The federal fiscal crisis will, out of necessity, accelerate the participative alliance between government and industry. ITA views this proceeding as an opportunity to discuss and promote ideas for developing this alliance in a manner that is mutually beneficial.

9. In formulating proposals for a more active industry role in the functions currently performed by the FCC, ITA believes it is necessary to focus on regulatory activities that, in general, do not involve the exercise of administrative discretion. Clearly, there are some functions, such as the development of policies and regulations and the conduct of administrative hearings, that involve the exercise of a high degree of discretion by federal decision makers. These functions, ITA submits, should remain the exclusive preserve of the federal government.

10. Other functions, however, are more ministerial in nature. There are, for instance, a variety of relatively routine application and licensing cases that, under the appropriate circumstances, could be handled by parties outside the FCC. It is ITA's belief that some portion of the application workload could

be delegated to outside entities. Similarly, certain essential enforcement functions could also be performed by private organizations. In the pages that follow, ITA provides specific recommendations regarding the delegation of these responsibilities to the private sector.

**A. Private Wireless Land Mobile Licensing Functions**

11. Qualified frequency advisory committees could assume responsibility for some of the routine administrative and technical aspects relating to the licensing of radio facilities in the private land mobile radio services and maintenance of official licensing records. Application processes and transactions that are ministerial in nature, i.e., activities that do not require the exercise of personal judgment, discretion, or a specific public interest determination, could be delegated to outside sources.

12. In particular, it would be feasible for qualified frequency coordinators to perform the following processing actions:

- Requests to change licensee name or address.
- Applications to make minor changes to existing licenses.
- Requests to cancel station authorizations.
- Applications to renew station licenses.
- Applications for Special Temporary Authority.
- Applications for assignment of station licenses.

- Applications to establish new systems on frequencies available on a shared basis.

### **Objectives**

13. There are three specific objectives underlying the proposal to have qualified frequency advisory committees assume some of the routine licensing functions in the private land mobile radio services. These objectives are to:

- Improve FCC productivity by delegating non-discretionary aspects of the license processing function to qualified advisory committees.
- Permit the Commission to focus its limited staff resources on activities and functions that have significant public interest implications.
- Allow the Commission to capitalize to a greater extent on the resources available among existing industry participants in the FCC process.

### **Statutory Considerations**

14. In all cases where the Communications Act requires the operators of radio stations to have licenses, the Act anticipates that the licenses would be issued by the Commission itself. Section 307 of the Act is illustrative. This section states:

The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant therefor a station license provided for by this Act.

15. Other provisions are similar. For example, Section 309 of the Act provides that, when entities need to operate radio stations on a temporary basis, the Commission shall issue Special Temporary Authority. Similarly, Section 310(d) of the Act states that station licenses may not be transferred or assigned without the prior approval of the Commission.

16. Accordingly, in any effort to delegate the responsibilities of the Commission to private organizations, the first consideration must be to examine whether the delegation involves licensing activities and, if so, to assess ways to ensure compliance with Section 307 and the other similar provisions. A secondary consideration relates to the collection of application fees. Under Section 158 of the Act, the Commission is responsible for accepting application fees. Therefore, any process that involves the filing of application fees must take Section 158 into consideration.

17. In ITA's view, the requirement for the FCC to issue licenses and other authorizations can be satisfied without amending the Communications Act. The Commission already possesses ample statutory authority to utilize the services of frequency advisory committees "in coordinating the assignment of frequencies to stations in the private land mobile services and in the fixed

services."<sup>2</sup>

18. The production of licenses itself is a purely ministerial act that can legally be performed by any entity to whom the FCC delegates responsibility. Further, as long as the Commission has an opportunity to review the authorizations and issue grant "instructions" to the selected coordinators before the documents are mailed to the licensees, it appears that the literal requirements of the Communications Act would be satisfied.

#### Rule Considerations

19. As with the Communications Act, the Commission's rules anticipate that the Commission will be responsible for the issuance of station licenses and approval of modifications, renewals, and assignment of station licenses. Except in those areas that are governed by statute however, the Commission is at liberty to change the relevant rule sections.

20. ITA believes that it would be prudent to amend certain rule sections before the Commission delegates authority to the qualified frequency coordinators. Specifically, ITA finds that the following rule sections should be amended:

- Section 1.924 (Amend this section to provide for the

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<sup>2</sup> Section 332 of the Communications Act of 1934, as amended, 47 U.S.C. §332 (1995).

filing of assignment applications with either the FCC or entities to whom the Commission has delegated authority);

- Section 1.951 (Amend this section to specify that, at the Commission's direction, applicants will send certain types of applications to selected frequency coordinators for processing);
- Section 90.175 (Amend this section to reflect the expanded role of qualified frequency coordinators);
- Section 90.611 (Amend this section to reflect the fact that applications involving non-discretionary actions in the context of non-mutually exclusive situations may be mailed to selected frequency coordinators designated by the Commission).

21. With respect to the application fees provided for in Section 1.1102 of the rules, there would not have to be any significant changes regarding either the flow of fees or existing accounting procedures. Under the existing procedures, the frequency coordinators now routinely receive, and forward to the FCC's lockbox bank, the application fees for private radio applications that are subject to frequency coordination. As a consequence, no alteration of the existing process would be required.

#### **Process for Implementing the Proposed Delegation of Authority**

22. ITA proposes the following as a reasonable approach to the delegation of licensing responsibilities to qualified frequency coordinators:

First Stage: Identify those classes of applications that the Commission desires to initially delegate to the frequency coordinators.



- Second Stage: Establish the criteria for determining which of the certified frequency coordinators are qualified to participate in the delegation of authority.
- Third Stage: Designate the selected frequency coordinators.
- Fourth Stage: Make appropriate changes to the Commission's rules and announce the corresponding changes in procedures.
- Fifth Stage: Implement the revised applications flow for the selected types of applications.
- Sixth Stage: Arrange for periodic audits conducted by the FCC's Inspector General to ensure that the system is working effectively and with the desired results.

23. In making these proposals, ITA presumes that there will be no immediate legislative changes to authorize or otherwise accommodate the delegation of responsibilities. We do expect, however, that the Commission would make appropriate changes in its rules to facilitate the delegation of responsibility, except in those instances where statutory constraints prohibit such measures.

24. Further, ITA takes the position that, to ensure compliance with the "letter" of the law, the FCC would have to direct or "instruct" the qualified frequency advisory committees to issue granted license documents. This instruction could be accomplished in an electronic or automated fashion, whereby the advisory committees would electronically advise the Commission of the authorizations that are ready for grant. Given the non-discretionary nature of the actions under consideration, the Commission's receipt and recordation of the proposed grants could

constitute acknowledgement of the proposed actions and serve as the requisite direction or instruction to proceed with the grants.

**B. Microwave System Licensing Functions**

25. Processing of microwave applications presents some different considerations than those raised by private land mobile applications. There are some fundamental distinctions, of course, between land mobile and microwave. One additional complexity with microwave applications is that applicants have greater latitude when selecting an entity to perform frequency coordination. Unlike the private land mobile services, the FCC does not certify the entities that perform microwave engineering studies. Applicants may either contract with a frequency engineering company for the required frequency analyses or may perform these studies themselves.

26. An added complexity with microwave processing is that applications for common carrier and private microwave systems generally use the same frequency bands. Further, the Commission has recently consolidated the applicable rules for common carrier and private microwave systems<sup>3</sup> and the same organization unit within the Commission processes both common carrier and private microwave applications.

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<sup>3</sup> Report and Order, WT Docket No. 94-148, adopted February 8, 1996, released February 29, 1996.

27. In view of the similarities between common carrier and private microwave applications, if the Commission were to delegate responsibility for certain aspects of microwave processing to private entities, it would likely have to include both common carrier and private microwave applications in the responsibilities delegated. This would not necessarily be an impediment, however.

28. ITA recommends that the Commission examine the feasibility of delegating the following types of common carrier and private microwave applications to qualified private organizations:

- Requests to change licensee name or address.
- Applications to make minor changes to existing licenses.
- Requests to cancel station authorizations.
- Applications to renew station licenses.
- Applications for Special Temporary Authority.

C. Delegation of Responsibility for Enforcement Activities

29. Commissioner Susan Ness recently went on record with the statement that, when it comes to enforcement, "the Commission is no paper tiger."<sup>4</sup> Despite the best intentions of Commissioner Ness and the other Commissioners, however, it appears that the FCC no longer has sufficient personnel and monetary resources to devote to enforcement efforts in the field. In ITA's view, enforcement is

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<sup>4</sup> Statement of Commissioner Ness, 10 FCC Rcd. 12259 (1995).

another area in which the FCC could effectively rely on qualified frequency coordinators for assistance.

30. Frequency coordinators already perform some enforcement functions, such as working with private land mobile licensees to resolve interference cases. Frequency coordinators are in a position to recommend technical solutions that will remedy interference between co-channel and adjacent channel land mobile licensees. With the appropriate delegation of authority from the Commission, qualified frequency coordinators could assume a larger responsibility for private land mobile radio enforcement activities.

31. If the Commission were to delegate enforcement responsibilities as ITA suggests, it would have to carefully define the scope of authority that the frequency coordinators possessed. Further, in order for the proposed delegation to be effective, the Commission would have to make it very clear that the coordinators had the firm support of the FCC to resolve interference cases. The coordinators could be responsible for performing any preliminary investigations that might be necessary. The facts developed during a preliminary investigation could then serve as the basis for a "settlement" that would be negotiated between the frequency coordinator and an offending licensee. In egregious cases, the coordinators could furnish the Commission with the results of the preliminary investigation and recommend that the FCC initiate

appropriate sanctions, such as forfeitures or revocation of licenses.

32. ITA also believes that there are other measures that could be employed to assist in the enforcement effort. For example, the Commission could incorporate radio equipment dealers and repair personnel into the enforcement effort. This suggestion was the essence of a proposal that ITA, in conjunction with the Council of Independent Communication Suppliers, submitted to the FCC in 1994 in a petition for rule making.<sup>5</sup> This petition for rule making, a copy of which is attached to these comments, is currently pending at the Commission.

33. The petition recommended that the Commission institute a program for licensing persons in the private sector who are engaged in installing, servicing, or maintaining private land mobile radio equipment. The fundamental premise of the petition was that, when the technicians responsible for installing and maintaining radio equipment are licensed in one form or another by the FCC, they have a greater incentive to ensure that their customers comply with the rules regarding operation of station equipment.

34. ITA was motivated to file the petition because of the

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<sup>5</sup> Petition for Rule Making in the Matter of Instituting a Simplified Program for Licensing Personnel in the Installation, Servicing and Maintenance of Radio Systems Designed to Operate on Private Land Mobile Radio Service Frequency Bands, RM-8680.

"direct link" that it perceives between technician licensing and the level of compliance with the station licensing requirement. As the petition stated, "the proposed [technician] licensing requirement is necessary to discourage the activities of individuals who promote, either directly or indirectly, unlicensed operations on the private land mobile frequency bands."<sup>6</sup> In ITA's view, this "direct link" continues to be equally valid today. ITA continues to believe that, by licensing radio technicians, the Commission "will create a heightened sensitivity to FCC operating requirements."<sup>7</sup>

#### IV. CONCLUSIONS AND RECOMMENDATIONS

35. ITA offers the following conclusions and recommendations for the Commission's consideration:

- Though the Communications Act requires that the Commission retain responsibility for "granting" station licenses, the Act appears to be sufficiently flexible to permit the FCC to delegate certain non-discretionary licensing functions to private organizations, provided that the Commission exercises effective oversight.
- When delegating functions to frequency coordinators, the Commission should "push the envelope" and take full advantage of the flexibility in the Communications Act.
- The Commission should make appropriate changes to

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<sup>6</sup> Id., page 10.

<sup>7</sup> Id.

Parts 1, 90 and 101 of its rules to reflect the authority delegated.

- The Commission could use the 30-day reconsideration period provided in Section 1.108 of the rules as a safeguard mechanism for reviewing decisions reached on delegated authority.
- The Commission should delegate to qualified frequency coordinators the responsibility for non-discretionary actions relating to the following private land mobile licensing functions:
  - address changes
  - minor modifications to station licenses
  - station cancellations
  - license renewals
  - Special Temporary Authority
  - assignment of station licenses
  - applications for new stations to be operated on shared frequencies.
- The Commission should delegate to qualified private entities the responsibility for actions relating to the following private and common carrier microwave licensing functions:
  - address changes
  - minor modifications to station licenses
  - station cancellations
  - license renewals
  - Special Temporary Authority
- The Commission must adopt strict standards for identifying those organizations that are qualified to assume responsibility for licensing functions. It is imperative that any such organizations have a fully functioning capability for electronic exchange of data with the Commission.
- The Commission should compensate the designated frequency coordinators for the work performed by paying them a specified percentage of the application fees collected from the applications included in the delegation of authority.
- The Commission's Inspector General would have to implement an active auditing program to ensure that the selected frequency coordinators effectively perform the functions delegated to them.
- The Commission should also formally delegate

responsibility for private land mobile enforcement matters to qualified frequency coordinators and should carefully define the scope of the authority being delegated.

- The Commission should institute a program for licensing persons in the private sector who are engaged in installing, servicing, or maintaining private land mobile radio equipment, as recommended in the Petition for Rule Making docketed under RM-8680.



WHEREFORE, THE PREMISES CONSIDERED, the Industrial Telecommunications Association, Inc. respectfully submits these Comments and urges the Federal Communications Commission to act in accordance with the views expressed herein.

INDUSTRIAL TELECOMMUNICATIONS  
ASSOCIATION, INC.

By: 

Mark E. Crosby  
President and Managing  
Director

ATTACHMENT

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Date: March 15, 1996